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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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CHRISTOPHER HADSELL,
Plaintiff,
v.
BARRY BASKIN, et al.,
Defendants.

Case No. [4:18-cv-00293-KAW](#)

**ORDER DENYING PLAINTIFF'S
MOTIONS TO AWARD SERVICE
EXPENSES AGAINST CATHERINE
ISHAM AND THE CONTRA COSTA
COUNTY DEFENDANTS**

Re: Dkt. Nos. 57, 59

On April 24, 2018 and April 25, 2018, Plaintiff Christopher Hadsell filed motions to award service expenses against Catherine Isham and the Contra Costa County Defendants on the grounds that they failed to waive service. (Pl.'s Isham Mot., Dkt. No. 57; Pl.'s County Defs. Mot., Dkt. No. 59.)

Upon review of the moving papers, the Court finds this matter suitable for resolution without oral argument pursuant to Civil Local Rule 7-1(b), and, for the reasons set forth below, DENIES the motions to award costs.

I. BACKGROUND

Plaintiff Christopher Hadsell filed this lawsuit against 22 defendants alleging various civil rights violations arising from his state court divorce proceedings. (See First Am. Compl., "FAC," Dkt. No. 45 ¶¶ 1-2.) Essentially, Plaintiff alleges that the judges, court staff, County employees, and his ex-wife were "conspiring" to defraud him and violate his civil rights. *Id.*

Among those sued are Plaintiff's ex-wife Catherine Isham, and Mary Lindelof, Melinda Self, and G. Boyd Tarin, who participated in the state court proceedings in the scope of their employment with the Contra Costa County Department of Child Support Services ("DCSS") (collectively "County Defendants"). (FAC ¶¶ 6(E, I, K, P, R).)

1 On April 24, 2018, Plaintiff filed a motion against Ms. Isham to recover the costs
2 associated with her failure to waive service of the summons, which required that he effect personal
3 service of the complaint pursuant to Federal Rule of Civil Procedure 4(e)(2)(A). (Pl.’s Isham Mot.,
4 Dkt. No. 57 at 4-5.) He sent her a letter seeking reimbursement of the \$95.49 incurred in
5 effecting service, but she never responded nor made payment. *Id.* at 5. Now, Plaintiff seeks the
6 \$95.49 for personal service, and claims that the reasonable expenses incurred in making this
7 motion are \$1,000. *Id.* On May 8, 2018, Ms. Isham filed an opposition. (Isham Opp’n, Dkt. No.
8 67-1.) On May 15, 2018, Plaintiff filed a reply. (Pl.’s Isham Reply, Dkt. No. 75.)

9 On April 25, 2018, Plaintiff filed a motion against the County Defendants to recover the
10 costs associated with their failure to waive service of the summons in response to an email sent on
11 January 18, 2018, which required that he effect personal service of the complaint pursuant to
12 Federal Rule of Civil Procedure 4(e)(2)(A). (Pl.’s County Defs. Mot., Dkt. No. 59 at 6; Decl. of
13 Christopher Hadsell, “County Hadsell Decl.,” Dkt. No. 59 ¶ 3.) Thereafter, he sent a letter seeking
14 reimbursement of the \$448.80 incurred in effecting service, but they never responded nor made
15 payment. *Id.* at 7. Now, Plaintiff seeks reimbursement for the costs incurred for personal service,
16 and claims that the reasonable expenses incurred in making this motion are \$1,000. *Id.* On May 9,
17 2018, the County Defendants filed an opposition. (County Defs.’ Opp’n, Dkt. No. 69.) On May
18 16, 2018, Plaintiff filed a reply, in which he reduced the amount of the service costs incurred to
19 \$310.45. (Pl.’s County Defs. Reply, Dkt. No. 76 at 3.)

II. DISCUSSION

21 As an initial matter, Plaintiff is representing himself, so he is not entitled to recover
22 reasonable attorneys' fees incurred in making the motion. Thus, his request for \$1000.00 in
23 expenses incurred in making these two motions is DENIED, and the only issue is whether he can
24 recover the costs of personal service.

A. Catherine Isham

26 Plaintiff seeks to recover the \$95.49 incurred to effect personal service after his ex-wife
27 failed to waive service. “Rule 4 requires a defendant to pay reasonable attorney’s fees if the
28 defendant refuses to sign and return a waiver of service requested by plaintiff without good cause

1 and the plaintiff files a motion to collect any service-related expenses.” *Rollin v. Cook*, 466 F.
2 App’x 665, 667 (9th Cir. 2012)(citing Fed. R. Civ. P. 4(d)(2)). Generally, “[i]t is not good cause
3 for failure to waive service that the claim is unjust or that the court lacks jurisdiction.” *Estate of*
4 *Darulis v. Garate*, 401 F.3d 1060, 1064 (9th Cir. 2005)(quoting Fed. R. Civ. P. 4(d)(2) Advisory
5 Committee note on 1993 Amendment).

6 The Advisory Committee note on the 1993 Amendment of Rule 4, however, also provides
7 that:

8 The aims of the provision are to eliminate the costs of service of a
9 summons on many parties and to foster cooperation among
10 adversaries and counsel. The rule operates to impose upon the
11 defendant those costs that could have been avoided if the defendant
12 had cooperated reasonably in the manner prescribed. This device is
useful in dealing with defendants who are furtive, who reside in
places not easily reached by process servers, or who are outside the
United States and can be served only at substantial and unnecessary
expense.

13 Fed. R. Civ. P. 4(d)(2) Advisory Committee note on 1993 Amendment). Here, Ms. Isham is
14 representing herself, and has limited legal understanding of federal court procedure, and believed
15 it to be similar to state court, where fees and costs are awarded after a matter is resolved. (Isham
16 Opp’n at 2.) Furthermore, the Court finds that this lawsuit is simply a vehicle used by Plaintiff to
17 harass his ex-wife, while denying her court-ordered support. Thus, it is unreasonable to expect Ms.
18 Isham, who is proceeding pro se and has a limited understanding of federal court procedure, to
19 cooperate with Plaintiff given his proclivity to use the courts for an improper purpose. Lastly, the
20 undersigned notes that the costs incurred in personally serving Ms. Isham were minimal, because
21 she was not evading service of process. Thus, the aims of the cost-shifting provision are not
22 satisfied, and, instead, in this instance, it would be a profound injustice to require her to pay the
23 costs associated with effecting personal service when one of the purposes of this lawsuit is to
24 harass her.

25 Accordingly, the Court finds that Ms. Isham has demonstrated good cause for failing to
26 waive service, and denies Plaintiff’s motion to award the \$95.49 in costs incurred in serving her
27 personally.

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B. County Defendants

2 In his reply, Plaintiff reduced the requested recovery of costs incurred in effecting personal
3 service on the County Defendants to \$310.45, as he recognizes that DCSS is a county agency that
4 is not required to waive service. (Pl.’s County Defs. Reply at 3.) Indeed, the Advisory Committee
5 note on the 1993 Amendment explicitly states that the Rule 4(d) is not meant to apply to
6 governmental entities, including municipalities for the practical reason that their mail facilities
7 may be inadequate, and that they “should not be confronted with the potential for bearing costs of
8 service in cases in which they ultimately prevail.” Fed. R. Civ. P. 4(d)(2) Advisory Committee
9 Note on 1993 Amendment. Here, the individual county employees are being sued for conduct
10 taken in the course of their employment. In fact, they were personally served on County property.
11 (See County Defs.’ Opp’n at 4.) Thus, it could be argued that they should also be exempt from the
12 waiver requirement, since they would presumably suffer from the same mail issues as their agency
13 employer.

14 Notwithstanding, Plaintiff’s declaration does not adequately support the contention that he
15 sent a valid waiver form to the individual defendants by either first-class mail or other reliable
16 means, as required by Rule 4(d)(1)(G). Rather, it states only that he emailed the Contra Costa
17 County Defendants, and that they failed to waive service of summons. (County Hadsell Decl. ¶¶ 3-
18 4.) It does not provide their email addresses or a copy of the email that he sent. *See id.* There is
19 also no indication that Plaintiff sent the waiver via first-class mail. Indeed, Ms. Self does not
20 recall ever receiving a waiver form, and, if she had, she would have forwarded it to the County
21 Counsel. (Decl. of Melinda Self, Dkt. No. 69 at 19 ¶ 4.) Thus, Plaintiff has not met his burden of
22 showing that he properly requested that the individual defendants waive service.

23 Accordingly, Plaintiff is not entitled to recover the cost of service from the any of the
24 County Defendants, and the motion is denied.

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III. CONCLUSION

In light of the foregoing, the Court DENIES Plaintiffs' motions to award service expenses against Catherine Isham and the Contra Costa County Defendants.

IT IS SO ORDERED.

Dated: July 3, 2018

Kandis Westmore
KANDIS A. WESTMORE
United States Magistrate Judge